



November 2, 2017

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 14-50, 09-182, 07-294, 04-256,  
17-289, GN Docket No. 16-142

Dear Ms. Dortch:

On October 31, 2017, Rick Kaplan, Alison Neplokh, Antrell Tyson, Emmy Parsons and the undersigned, all of the National Association of Broadcasters (NAB), had separate meetings with David Grossman and Holly Saurer of Commissioner Clyburn's office, Brooke Ericson of Commissioner O'Rielly's office, Nirali Patel of Commissioner Carr's office, and Kate Black of Commissioner Rosenworcel's office. During these meetings, NAB discussed the draft Order on Reconsideration and Notice of Proposed Rulemaking updating the Commission's broadcast ownership and attribution rules, as well as the draft Report and Order and Further Notice of Proposed Rulemaking authorizing broadcasters to use the Next Generation TV standard.

## Ownership

NAB supports the draft order's efforts to modernize the broadcast ownership rules to more accurately reflect the modern media marketplace, although NAB believes the final order should take additional steps to allow broadcasters to compete. First, NAB urges the Commission to eliminate the Top-Four Prohibition. The draft order leaves this outdated limitation in place despite the fact that the Commission itself acknowledges that each market has different competitive dynamics. A blanket prohibition will unfairly harm broadcasters and consumers in markets where combinations among the top four stations are in the public interest. Rather than placing a high burden on broadcasters in each market by maintaining this arbitrary restriction, the Commission should, at the very least, remove the restriction and apply a case-by-case review of those combinations involving top four stations.

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The FCC's draft order on reconsideration also retains its decision requiring disclosure of a virtually unlimited range of shared service agreements (SSAs) between TV stations, even those located in different markets. The FCC should reverse or significantly narrow its decision. As NAB pointed out in its petition for reconsideration, the FCC's 2016 order did not identify specific public interest harms that the disclosure rule would alleviate, did not justify the breadth of the disclosure requirements, and did not show how agreements for sharing the provision of many routine station services implicates either the core functions of a TV station (such as provision of programming) or the interests of the viewing public. If the Commission is interested in such information, it could more simply meet with broadcasters to discuss the matter. A new formal collection is merely a precursor to more unnecessary regulation.

Finally, the Commission should reconsider its decision regarding compliance with the Local Radio Ownership Rule in markets with embedded markets. Refusing to allow stations in embedded markets to realize synergies and savings from potential mergers unduly and unreasonably handicaps those stations for no sound reason. In particular, Connoisseur Media L.L.C.'s recent *ex parte* filing demonstrates clearly that the draft order is based on a misinterpretation of Nielsen Audio and BIA's designation of embedded market station's as "above-the-line." Given that the draft order relies heavily on this misinterpretation, the Commission must reverse course and amend its approach to embedded markets.<sup>1</sup>

## **Next Gen TV**

NAB welcomes the approval of a voluntary, market-driven deployment of Next Gen TV. Commission approval of this standard will be pro-consumer and pro-innovation, setting the stage for broadcasters to offer superior service to their viewers and maintain competitiveness in a dynamic video programming marketplace.

Because broadcasters will not have additional spectrum during the transition, it is imperative that the Commission provide broadcasters with as much flexibility as reasonably possible. If the Commission attempts to over-regulate this transition, it will simply be locking broadcasters in place and ensuring that the industry fails.

Accordingly, we urge the Commission to incorporate additional flexibility into its simulcasting requirement, and provide an exception to the requirement where broadcasters do not have the rights to air particular programming using both standards. Absent such flexibility, if a broadcaster has the rights to air a particular program only using the current DTV standard, it could be forced to remain dark on its Next Gen facility for the duration of that program. That

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<sup>1</sup> Letter from David Oxenford to Marlene H. Dortch, MB Docket Nos. 09-182, 14-50 (Oct. 30, 2017).

outcome cannot possibly serve the public interest. NAB further urges the Commission to shorten the period during which simulcasting will be required from five years to three.

We also recommend that the Commission adopt a standard for expedited processing of applications that mirrors the coverage area standard the Commission used during the DTV transition. During the DTV transition, the Commission required stations to ensure that their predicted DTV service contour covered their community of license.<sup>2</sup> The Commission's reasoning in this regard – providing broadcasters “a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers,” applies with equal force to the Next Gen deployment.<sup>3</sup> There is no reason to adopt a new standard untethered to commercial realities.

We urged the Commission not to require command-and-control consumer education requirements, as broadcasters have every incentive to ensure that viewers know how to continue watching their stations. NAB understands the temptation to do so, but cautions the Commission that mandates of these types often serve to undermine stations' ability to effectively communicate with and educate their viewers. Finally, the Commission should also adopt a more flexible standard for the waiver of the simulcast requirement, to ensure that rural stations are not held to an unreasonably high or expensive standard if they are unable to find viable simulcasting partners.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a stylized, flowing script.

Patrick McFadden  
Associate General Counsel,  
National Association of Broadcasters

cc: David Grossman  
Holly Saurer  
Brooke Ericson  
Nirali Patel  
Kate Black

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<sup>2</sup> Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946, ¶ 20 (2001).

<sup>3</sup> *Id.* at ¶ 21.